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OFFICE OF PETITIONS

In re Application of :
Richard C. Johnson : DECISION ON PETITION
Application No. 09/490,783 :
Filed: 24 January, 2000 :
Atty Docket No. ORCL5628 :

This is a decision on the twice renewed petition under 37 CFR 1.137(b),¹ which is treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181, filed on 6 February, 2006, to revive the above-identified application.

The petition to withdraw the holding of abandonment is GRANTED.

The petition under 37 CFR 1.137(b) is DISMISSED as immaterial.

This application became abandoned on 9 July, 2005, for failure to file a proper reply to the final Office action mailed on 8 February, 2005, which set a three (3) month shortened statutory

¹ Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

period for reply. On 9 May, 2005, an amendment after final rejection was filed. The examiner determined the amendment did not place the application in *prima facie* condition for allowance, however, and an Advisory Action was mailed on 19 May, 2005. A second amendment after final rejection accompanied by a two (2) month extension of the time for reply was filed on 8 July, 2005. The examiner determined that the second amendment did not place the application in *prima facie* condition for allowance, however, and an Advisory Action was mailed on 5 August, 2005. Notice of Abandonment was mailed on 25 August, 2005. The petition filed on 6 October, 2005, was dismissed on 15 December, 2005. The petition filed on 23 December, 2005, was dismissed on 30 January, 2006.

Petitioner again avers that a Request for Continued Examination (RCE) was filed on 8 June, 2005, and that a copy of the RCE Request Transmittal is enclosed with the petition. A copy of the RCE Request has been located with the papers filed on 6 February, 2006. The RCE Request Transmittal contains a Certificate of Facsimile Transmission dated 8 June, 2005, as well as a copy of the sending unit's transmission report showing the fax was received at the USPTO on 8 June, 2005.

A review of the documents submitted reveals that the RCE Request Transmittal filed with the present petition miscaptures the application number as "09/490,788". Under current Office procedure, a response that has an incorrect serial number is handled in accordance with MPEP 508.03. If a paper having an incorrect serial number contains sufficient information to identify the correct application and was timely received at the PTO, the holding of abandonment will be withdrawn.

The first inventor's name, title of invention, filing date, attorney docket number, Examiner's name, and Art Unit are correctly stated on the Request for RCE Request Transmittal. In reviewing the papers which were submitted, it is therefore concluded that there was sufficient information thereon to associate the papers with the instant file. It is therefore concluded that the RCE Request Transmittal filed on 8 June, 2005, was received in the Office but was not matched with the proper application due to the incorrect application number placed on the RCE Request Transmittal.

As petitioner has shown that a timely RCE Request, including a request for an extension of time and submission under 37 CFR 1.114 was filed, the showing of record is that the application

was never abandoned. As such, the holding of abandonment is withdrawn, and the Notice of Abandonment is vacated. However, as the Office properly treated the petition under 37 CFR 1.137(b) filed on 6 October, 2005, accompanied only by an amendment after final rejection, on the merits, the petition fee will not be refunded.

The RCE fee will be charged to counsel's deposit account.

The application will be forwarded to Technology Center Art Unit 3626 for consideration of the RCE and submission.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.



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Office of Petitions